

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DAVID M. LEMIEUX,)	
)	
Petitioner,)	
)	
v)	Civil Action No.2:10cv40-TMH
)	(WO)
J.A. KELLER,)	
)	
Respondent.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

On January 19, 2010 (Doc. No. 2), this court entered an order that directed Petitioner to either submit the \$5.00 filing fee on or before February 9, 2010, or file by that same date the appropriate affidavit in support of a motion for leave to proceed *in forma pauperis* in this action for habeas corpus relief under 28 U.S.C. § 2241. Petitioner was specifically cautioned that his failure to comply with the court's January 19 order would result in a recommendation that his case be dismissed. (*See* Doc. No. 2 at 1.) The requisite time has passed, and Petitioner has filed nothing in response to the court's order. Consequently, the court concludes that dismissal of this case is appropriate for Petitioner's failure to comply with the court's order.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED without prejudice for Petitioner's failure to comply with the order of this court.

It is further

ORDERED that on or before March 3, 2010, the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 18th day of February, 2010.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE